IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT JAIPUR BENCH, JAIPUR.

S.B. CIVIL SECOND APPEAL NO.781/2007
Ghashi & Ors. Vs. Smt. Phoolwati & Ors.

29.10.2007.

HON'BLE MR. JUSTICE DALIP SINGH

Shri N.K. Singhal, for the appellant.

This is a defendant's second appeal in a suit for permanent injunction filed by the plaintiff respondents No.1 and 2. Learned trial court however, dismissed the suit though under issue No.1 on page 4 of the certified copy of the judgment dated 31.8.2006 the finding had been given by the learned trial court that the defendant appellant had encroachment upon the Government land, Charagah of khasra No.173 and Khasra No.174 which is 'Gair Mumkin Rasta'.

Thus the finding was against the defendant appellant so far as the encroachment is concerned. However, the learned trial court came to the conclusion that the plaintiff had no right to seek the relief of permanent injunction for removal of the encroachment from the Government land. On appeal being filed by the plaintiff the learned appellate court maintained the finding with regard to issue No.1 and decreed the suit by issuing a decree for permanent injunction against the defendant appellant.

Learned counsel for the appellants does not dispute the finding with regard to issue No.1 but the disputes the right of the plaintiff for filing the suit for permanent injunction for removal of the encroachment from public/Govt. Land.

Having considered the judgment of the learned-lower appellate court. I am of the view that the impugned judgment suffers from no illegality. No one has a right to maintain his encroachment over the Government land of charagah and Rasta which are set apart for public utility and the rights of the plaintiff to enjoy the same are also affected. In the facts and circumstances if the decree of the learned trial court is to be maintained, it would be amount to giving the premium to the encroachment made by the defendant appellant on the Government land which is 'Rasta and Charagarh both of which are land set apart for public utility to be used for public purpose in respect of which the common man and the citizens has a right to maintain the suit for removal of the encroachment. This second appeal and the stay application are dismissed summarily.

(DALIP SINGH),J.

Ramchandrkhatri,PS